

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE KAISER,

Defendant.

No. 11-CR-107-LRR

**ORDER REGARDING
MAGISTRATE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA AND APPLICATION
TO FIRE COURT-APPOINTED
COUNSEL**

I. INTRODUCTION AND BACKGROUND

On June 21, 2011, the Grand Jury returned a two-count Indictment against Defendant Jesse Kaiser. On July 1, 2013, Defendant appeared before United States Magistrate Judge Jon S. Scoles and entered a plea of guilty to Count 1 of the Superseding Indictment.¹ On July 1, 2013, Judge Scoles filed a Report and Recommendation in which he recommended that Defendant's guilty plea be accepted. On that same date, the parties filed a Waiver of Objections to the Report and Recommendation. On July 1, 2013, the court accepted the Report and Recommendation. On August 22, 2013, Defendant filed a letter asking that he be permitted to fire his attorney and withdraw his guilty plea. On August 28, 2013, Judge Scoles held a hearing on the Defendant's requests. On August 30, 2013, Judge Scoles filed a Report and Recommendation in which he recommended that Defendant be allowed to fire his court-appointed counsel, that Attorney Dennis McKelvie continue as standby counsel and that Defendant not be allowed to withdraw his guilty plea. The court, therefore, undertakes the necessary review of Judge Scoles's recommendations.

¹A Superseding Indictment was filed on July 26, 2013 to correct the citation to the statute under which Defendant was charged.

II. ANALYSIS

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

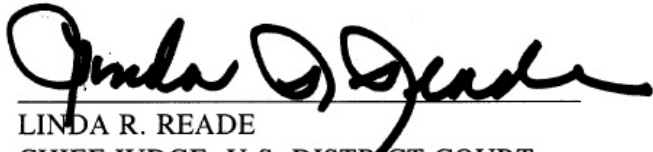
Fed. R. Civ. P. 72(b).

In this case, no objections have been filed,² and it appears to the court upon review of Judge Scoles's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Scoles's Report and Recommendation of August 30, 2013. Pursuant to the Report and Recommendation, Defendant's application to fire his court-appointed counsel is **GRANTED**, with Attorney Dennis McKelvie to continue as standby counsel. Defendant's application to withdraw his guilty plea is **DENIED**.

² The court notes that Defendant has filed certain letters. *See* docket nos. 80-82. In the letters, Defendant references Judge Scoles's Report and Recommendation. However, there is no reference which specifically addresses any findings or conclusions that were made by Judge Scoles. To the extent that Defendant argues that this court lacks subject matter jurisdiction, the court has already addressed that argument and found it to be without merit. *See* August 30, 2013 Order (docket no. 77).

IT IS SO ORDERED.

DATED this 19th day of September, 2013.

A handwritten signature in black ink, appearing to read "Linda R. Reade", written over a horizontal line.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA